APPENDIX A — OPINION OF THE SUPREME COURT OF PENNSYLVANIA DATED AND DECIDED NOVEMBER 27, 2000

SUPREME COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

DENNIS E. NIXON,

Appellant.

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

LORIE A. NIXON,

Appellant.

Argued March 7, 2000.
Decided Nov. 27, 2000.

* * *

Before FLAHERTY, C.J., and ZAPPALA, CAPPY, CASTILLE, NIGRO, NEWMAN and SAYLOR, JJ.

Appendix A

OPINION

ZAPPALA, Justice.

We granted allocatur for this Court to consider two issues. First, we consider whether to adopt a "mature minor doctrine" which would be an affirmative defense to the parental duty to provide care to a minor. Secondly, we consider whether Shannon Nixon had a right to refuse medical care pursuant to her privacy rights under the constitutions of the United States and this Commonwealth. For the reasons that follow, we choose not to adopt a "mature minor doctrine" as a criminal defense and further, we find that Shannon Nixon's constitutional right to privacy did not relieve her parents from fulfilling their statutory obligations. Therefore, we affirm the order of the Superior Court, which, in turn, affirmed the order and judgment of sentence of the Court of Common Pleas of Blair County.

This case arose from the following facts. Dennis and Lorie Nixon, Appellants, were the parents of the victim, Shannon Nixon. Shannon Nixon was sixteen years old at the time of her death. In mid-June 1997, it became obvious to Appellants that Shannon was not feeling well. Appellants began to pray for their daughter's health. They also took her to their place of worship where Shannon was "anointed".[1] Shannon initially reported feeling somewhat better, but then her condition deteriorated. She became increasingly weak

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1. Appellants and their children were members of the Faith Tabernacle Church, a religion in which illnesses are addressed through spiritual treatment rather than by medicine.

and fell into a coma. After a few hours in a comatose state, Shannon Nixon died. An autopsy determined that Shannon died from diabetes acidosis, which was a treatable, though not curable, condition.

Appellants were convicted of involuntary manslaughter, 18 Pa.C.S. § 2504, and also of endangering the welfare of a child under 18 Pa.C.S. § 4304. These statutes respectively state:

> Involuntary manslaughter
>
> (a) General rule. — A person is guilty of involuntary manslaughter when as a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, or the doing of a lawful act in a reckless or grossly negligent manner, he causes the death of another person.
>
> Endangering welfare of children
>
> (a) Offense defined. — A parent, guardian, or other person supervising the welfare of a child under 18 years of age commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.

Appellants' first argument is that we should adopt a "mature minor doctrine" and allow Appellants to assert such doctrine as an affirmative defense to the endangering welfare of children charge. If the affirmative duty created by 18 Pa.C.S. § 4304 was removed from Appellants, then it

follows that the involuntary manslaughter conviction would also fall. This is because the Commonwealth used § 4304 to show an unlawful act, one of the alternative prerequisites to § 2504.

By placing an affirmative duty upon parents and guardians, the legislature has acted to partially fulfill the Commonwealth's duty to care for those individuals who for one reason or another are legally incapacitated. This duty to care for those who are legally incapacitated arose under the sovereign's duty of parens patriae, and following independence was assumed by the individual states. See Commonwealth v. Baldwin, 54 Watts 1 (Pa.1832). By mandating primary responsibility for the child's wellbeing upon the parents, the legislature has not only acted toward fulfilling its role as parens patriae, but also has recognized that parents have a duty to provide for their children which accompanies the right to raise children with minimal state encroachment. As the United States Supreme Court stated:

> It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter. But the family itself is not beyond regulation in the public interest, as against a claim or religious liberty. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being,

> the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter ill health or death.

Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 166-67, 64 S.Ct. 438, 88 L.Ed. 645 (1944) (citations and footnotes omitted).

The Appellants argue that their daughter was mature enough to make her own decisions regarding health care and religion, and therefore ask us to create an exception to their obligation on the basis of their daughter's maturity. In defining the mature minor doctrine, Appellants refer us to a decision from our sister state of Tennessee which stated:

> Whether a minor has the capacity to consent to medical treatment depends upon age, ability, experience, education, training and degree of maturity or judgment obtained by the minor or, as well as upon the conduct and demeanor of the minor at the time of the incident involved. Moreover, the totality of the circumstances, the nature of the treatment and its risks and probable

> consequences, and the minor's ability to appreciate the risk and consequences are to be considered.

Cardwell v. Bechtol, 724 S.W.2d 739, 748 (Tenn.1987). See also Belcher v. Charleston Area Medical Center, 188 W.Va. 105, 422 S.E.2d 827 (1992), and In re E.G., 133 Ill.2d 98, 139 Ill.Dec. 810, 549 N.E.2d 322 (1989).

This doctrine is not the legal equivalent of emancipation, for an emancipated minor assumes all legal responsibility for his or herself. Thus, in the situation of an emancipated minor, the legal duty to provide care is no longer applicable. There is no indication in argument or record that Shannon Nixon was emancipated. Rather, she lived in Appellants' home and did not assert her independence from Appellants in a manner which would lead to a finding of emancipation. See Nicholason v. Follweiler, 735 A.2d 1275, 1278 (Pa.Super.1999); Ross v. Commonwealth of Pennsylvania, Department of Public Welfare, 60 Pa.Cmwlth. 403, 431 A.2d 1135, 1138 (1981); and Detwiler v. Detwiler, 162 Pa.Super. 383, 57 A.2d 426 (Pa.Super.1948).

We believe that, without passing comment upon the wisdom of the mature minor doctrine itself, a terse review of the facts and circumstances which confronted the courts of our sister states readily reveals why the doctrine is not applicable to Appellants' case.

In Cardwell v. Bechtol, the Supreme Court of Tennessee addressed the issue in the context of a civil medical malpractice suit, under that state's common law of torts. The

defendant, a licensed osteopath, performed spinal manipulations on a 17-year-old woman, without the consent of her parents. After complications arose, her parents brought suit against the osteopath for a variety of complaints related to the failure to obtain proper informed consent. As a defense, the osteopath asserted that the young woman was competent to, and actually did give informed consent for the procedure that he performed. The Tennessee court agreed with the defendant, and adopted the mature minor exception, as defined above.

In Belcher v. Charleston Area Medical Center, the Supreme Court of Appeals of West Virginia also adopted a version of the mature minor doctrine. That court addressed the doctrine in the context of a wrongful death suit, where the plaintiffs asserted that their son, a 17-year-old man with muscular dystrophy, should have been consulted prior to his doctor's withholding medical treatment from him due to a "Do Not Resuscitate" order which had been requested by his parents. When the young man had a respiratory arrest and cardiac failure, the hospital staff attempted to revive him only with the minimal procedures allowed by a "Do Not Resuscitate" order. That court held that

> except in very extreme cases, a physician has no legal right to perform a procedure upon, or withhold treatment from a patient without the patient's consent, nor upon a child without the consent of the child's parents or guardian, unless the child is a mature minor, in which case the child's consent would be required. Whether the child has the capacity to consent depends upon

> the age, ability, experience, education, training, and degree of maturity or judgment obtained by the child, as well as upon the conduct and demeanor of the child at the time of the procedure or treatment. The factual determination would also involve whether the minor has the capacity to appreciate the nature, risks, and consequences of the medical procedure to be performed, or the treatment to be administered or withheld.

Belcher, 422 S.E.2d at 838.

Finally, Appellants bring the case of In re E.G., a Minor, 133 Ill.2d 98, 139 Ill.Dec. 810, 549 N.E.2d 322 (1989), to our attention. The Supreme Court of Illinois held there that

> [t]he common law right to control one's health care was also the basis for the right of an incompetent patient to refuse life-sustaining treatment through a surrogate. . . . We see no reason why this right of dominion over one's own person should not extend to mature minors.

139 Ill.Dec. 810, 549 N.E.2d at 326. The rationale of the Illinois court demonstrates the limitations of the doctrine. As the Illinois court stated,

> [t]he trial judge must determine whether a minor is mature enough to make health care choices on her own. An exception to this, of course, is if the legislature has provided otherwise, as in the

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Consent by Minor to Medical Operations Act. We feel the intervention of a judge is appropriate for two reasons.

First, Illinois public policy values the sanctity of life. When a minor's health and life are at stake, this policy becomes a critical consideration. A minor may have a long and fruitful life ahead that an immature, foolish decision could jeopardize. Consequently, when the trial judge weighs the evidence in making a determination of whether a minor is mature enough to handle a health care decision, he must find proof of this maturity by clear and convincing evidence.

Second, the State has a parens patriae power to protect those incompetent to protect themselves. "[I]t is well-settled that the State as parens patriae has a special duty to protect minors and, if necessary, make vital decisions as to whether the condition is life threatening, as wrenching and distasteful as such actions may be." The State's parens patiae power pertaining to minors is strongest when the minor is immature and thus incompetent (lacking capacity) to make these decisions on her own. The parens patriae authority fades, however, as the minor gets older and disappears upon her reaching adulthood. The State interest in protecting a mature minor in these situations will vary depending upon the nature of the medical treatment involved. Where the health

> care issues are potentially life threatening, the State's parens patriae interest is greater than if the health care matter is less consequential.

139 Ill.Dec. 810, 549 N.E.2d at 327 (citations omitted).

We find the current case to have a crucial distinction from the cases relied upon by Appellants.[2, 3] The legislature of this Commonwealth has provided a statute which identifies those minors who are deemed sufficiently mature to give consent to medical treatment.

> Any minor who is eighteen years of age or older, or has graduated from high school, or has married, or has been pregnant, may give effective consent to medical, dental and health services for himself or herself, and the consent of no other person shall be necessary.

Act of Feb. 13, 1970, P.L. 19, No. 10, § 1, 35 P.S. § 10101. Our legislature, as Appellants assert, has created several other situations where a minor may give lawful consent for medical

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2. Because we find that an affirmative duty was statutorily placed upon Appellants, we need only note that this Court has indicated that, "[t]he inherent dependency of a child upon his parent to obtain medical aid, i.e., the incapacity of a child to evaluate his condition and summon aid himself, supports imposition of such a duty upon the parent." Commonwealth v. Konz, 498 Pa. 639, 450 A.2d 638, 641 (1982) (emphasis added).

3. Appellants fail to cite, and our own research fails to reveal any cases from our sister states which hold that the doctrine espoused by Appellants is viable as a defense in a criminal case.

treatment. See Act of April 14, 1972, P.L. 221, No. 63 § 12, 71 P.S. § 1690.112 (minors may consent to diagnosis or treatment when suffering from the use of controlled or harmful substances); Act of April 23, 1956 P.L. (1955) 1510 § 14, 35 P.S. § 521.14 (allows minors to consent to the treatment of venereal disease); and Act of Dec. 9, 1969 P.L. 333, § 1 as amended, 35 P.S. § 10001 (allows minors over 17 years old to voluntarily donate blood without parental consent) but cf. 18 Pa.C.S. § 3206(c) (requires a minor to petition court for consent to an abortion when the parents do not consent; before giving such consent, the court must ascertain that the minor is mature and capable of giving informed consent).

We agree that these statutes create specific exceptions to the general rule of incapacity. The statutes do not, contrary to Appellants' assertion, show a legislative intent that any minor, upon the slightest showing, has capacity either to consent to or to refuse medical treatment in a life and death situation. We therefore hold that the maturity of an unemancipated minor is not an affirmative defense applicable to the charges brought against Appellants.[4]

Appellants' second argument is that the parental duty to provide medical care was negated by Shannon Nixon's privacy interests under the constitutions of the United States

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4. We note that our Superior Court has held, that "even if [the minor victims] were considered mature enough to freely exercise their religious beliefs, it does not dispel [the parents'] duty while the children are in their care, custody, and control to provide them with parental care, direction and sustenance." Commonwealth v. Cottam, 420 Pa.Super. 311, 616 A.2d 988 (1992).

and Pennsylvania.[5] This Court has acknowledged that both constitutions do offer protections of personal privacy, which results from the "penumbra" of articulated rights. See In re "B", 482 Pa. 471, 394 A.2d 419 (1978). The Pennsylvania Constitution encompasses "the right to be let alone." Stenger v. Lehigh Valley Hospital Center, 530 Pa. 426, 609 A.2d 796 (1992). The difference between the two constitutions is in the tests involved in determining if a violation of privacy has occurred. In order to determine if a violation of the United States Constitution has occurred, a flexible balancing approach is employed with increasing levels of scrutiny corresponding to increasing levels of confidentiality intrusions. See id. at 801. On the other hand, under Pennsylvania's constitution, while the right to privacy is not absolute, we do not apply a flexible approach. In this Commonwealth, only a compelling state interest will override one's privacy rights. Id. at 802, citing Fabio v. Civil Service Commission of the City of Philadelphia, 489 Pa. 309, 414 A.2d 82 (1980).

A compelling interest in the welfare of minors may impinge upon the constitutional rights of both minors and adults simultaneously. In Commonwealth v. Wormser, 260 Pa. 44, 103 A. 500 (1918), this Court examined whether a criminal prosecution could stand for the crime of employing a minor at night and without a certificate. As a defense, the

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5. Neither the Commonwealth nor Appellants have addressed whether parents of a deceased minor have standing to assert the minor's constitutional rights as a bar to prosecution of their own criminal behavior. In the present circumstances, we decline to address this question sua sponte.

appellant argued that such a criminal prosecution infringed upon his, and the minor's, constitutional right to contract. We stated,

> [t]he statute in question was enacted under the general police power of the Commonwealth. Its object is declared to be "to provide for the health, safety, and welfare of minors," and it is too clear for discussion that this is an appropriate subject for legislative action not only in the exercise by the Commonwealth of its authority as parens patriae but also of the inalienable power to enact such laws as promote the health, morals and general welfare of the people.

260 Pa. at 46, 103 A. at 501.

As we find that the state's interest as parens patriae in the very life of an unemancipated minor is a compelling interest, and the imposition of a parental duty to provide care for a minor in their custody is an appropriate subject for legislative action, we need not to examine this constitutional question further. Additionally, as we find that Pennsylvania's Constitution is more protective of privacy than the United States Constitution, an analysis of that jurisprudence is unnecessary.

In summary, we hold that the mature minor doctrine suggested by Appellants is not an applicable defense in this case. We also hold that Appellants' convictions are not an unconstitutional violation of the victim's right to privacy. We therefore affirm the order of the Superior Court.[6]

Justice CAPPY files a concurring opinion.

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6. We note that Superior Court addressed various constitutional arguments regarding convictions under 18 Pa.C.S. § 2504 and § 4304 in Commonwealth v. Barnhart, 345 Pa.Super. 10, 497 A.2d 616 (1985) and Commonwealth v. Cottam, 420 Pa.Super. 311, 616 A.2d 988 (1992). We have not addressed many of the issues presented in those cases and will not do so here, as the parties do not raise them.

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CAPPY, Justice, concurring.

From my review of the record, it is evident that Shannon Nixon did not have the maturity to make an informed decision regarding medical treatment. Thus, I concur in the majority's result, which affirms the order of the Superior Court, upholding the trial court's judgment of sentence. I write separately, however, because I do not agree with the majority's characterization of the question that appellants raised for our consideration or with the majority's view of the role that legislative intent should play in this case or with the majority's ultimate decision to reject the mature minor doctrine.[1]

The question raised in this appeal — did Shannon Nixon, even though a minor, have the right to refuse medical attention — is of weighty import, and involves a matter which

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1. I found the majority opinion ambiguous. When I read the majority's statement on page 5 of its opinion that "[w]e believe that, without passing comment on the wisdom of the mature minor doctrine itself, a terse review of the facts and circumstances which confronted the courts of our sister states readily reveals why the doctrine is not applicable to Appellants' case", I was given to believe that the majority had decided not to determine, one way or the other, whether the doctrine would be adopted in Pennsylvania. If this had been the case, then the better course of action would have been the dismissal of this appeal as improvidently granted, rather than the issuance of an opinion containing dicta. It was after some deliberation of the majority's discussion of the statutory exceptions to the general rule of minor incapacity on pages 7 and 8 of its opinion, that I concluded that the majority has evaluated the doctrine and determined that it will not be part of our common law under any circumstances.

has "deep roots in our common law." In re Fiori, 543 Pa. 592, 673 A.2d 905, 909 (1996). In Pennsylvania, the control of one's own person and the right of self-determination are closely guarded through the principle of informed consent, which declares that absent an emergency, medical treatment may not be imposed without a person's permission. Id. The right to refuse treatment or to withdraw treatment once it has begun is a logical corollary to that principle. Id.

Under the common law, a minor is deemed incompetent to provide informed consent. Parents United for Better Schs., Inc. v. School Dist. of Phila. Bd. of Educ., 166 Pa.Cmwlth. 462, 646 A.2d 689, 691 (1994). Until the age of majority, a minor's parents make medical treatment decisions on his or her behalf. Id. The Pennsylvania legislature, however, has rendered the authority of parents to speak for their minor child with respect to health care less than absolute in certain circumstances, by enacting several statutes that allow minors to speak for themselves. Under 35 P.S. § 10101, a minor who is eighteen or older or graduated from high school or who has married or has been pregnant, may consent to health care treatment; under 35 P.S. § 10001, a minor who is seventeen years of age or older may donate blood in any voluntary, non-compensatory program without parental permission; under 35 P.S. § 10103 and 35 P.S. § 521.14(a), a minor who may be pregnant or infected with a venereal disease may seek and receive treatment; under 71 P.S. § 1690.112, a minor who suffers from use of a controlled or harmful substance may consent to the furnishing of medical care or counseling; and finally, under 18 Pa.C.S. § 3206(c), a minor who proves in the court of common pleas that she is mature and capable of giving informed consent may consent to and obtain an abortion.

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These statutes are at the heart of the majority's holding. The majority states:

> [These] statutes create specific exceptions to the general rule of incapacity. The statutes do not, contrary to Appellants' assertion, show a legislative intent that any minor, upon the slightest showing, has capacity either to consent to or to refuse medical treatment in a life and death situation. We therefore hold that the maturity of an unemancipated minor is not an affirmative defense applicable to the charges brought against Appellants.

Majority opinion at 1155.

While the majority and I agree that these statutes provide "specific exceptions" to the general precept that minors are legally incapable of informed consent, the majority and I part company in several respects.

First, I believe that the majority's characterization of appellants' position is inaccurate. In my view, appellants did not assert that a minor upon the "slightest showing" of capacity should be permitted to consent to or to refuse health care treatment or premise application of the mature minor doctrine on a "life and death situation." Instead, appellants argued that "a minor of demonstrated maturity" or "[a] minor who is able to demonstrate the requisite maturity" "should have the ability to make determinations as to medical care." (Brief for Appellants, pp. 11-12.).

Second, I do not believe that legislative intent should have the decisive role in the case sub judice that the majority apparently gives it. The majority's holding against recognition of the mature minor doctrine is expressly and exclusively premised on the intent with which the legislature enacted its statutory exceptions to the general rule of parental consent. While it is certainly proper and advisable for this court to take note of relevant statutory authority in assessing the wisdom of the doctrine, and to strive for a judicial pronouncement that is consistent with that authority, see Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897, 904, 905 (1979), it is not appropriate to give it a dispositive role. Except where the legislature has established a comprehensive statutory scheme, aimed at occupying an entire area, this court is guided, not directed, by legislative action. Id.

Lastly, I, unlike the majority, would recognize the mature minor doctrine. Indeed, the same statutes that inform the majority's rejection of the doctrine lead me to the opposite result. I agree with the legislature's willingness to make appropriate exceptions to the rule of minor incapacity in the first place and with the policies reflected in the exceptions the legislature has seen fit to enact. By their terms, the exceptions fall into two broad categories: those that are premised on a specific medical condition that ought to be treated and those that focus on a minor's status. With regard to the latter, the legislature has decided, for example, that turning eighteen, marrying, becoming a parent or graduating from high school are indicative of one's readiness to make health care decisions on one's own. 35 P.S. § 10101.

In the same way, I believe that when it is demonstrated that a minor has the capacity to understand the nature of his or her condition, appreciate the consequences of the choices he or she makes, and reach a decision regarding medical intervention in a responsible fashion, he or she should have the right to consent to or refuse treatment. I would, therefore, adopt the mature minor doctrine.

The record falls far short of establishing that Shannon Nixon met this standard. Accordingly, I concur in the majority's result.[2]

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2. Because I conclude that the mature minor doctrine does not apply in this case as a matter of fact, I decline to address appellants' contention that the doctrine provides them with an "affirmative defense" to the charges the Commonwealth brought against them. Because I would find that under the common law, a mature minor may consent to or refuse medical treatment, I would not reach, and I express no opinion on, the privacy issue appellants raise under the United States and Pennsylvania Constitutions. P.J.S. v. Pennsylvania State Ethics Comm'n, 555 Pa. 149, 723 A.2d 174, 176 (1999).

APPENDIX B — OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA DATED AND FILED SEPTEMBER 21, 1998

SUPERIOR COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

DENNIS E. NIXON,

Appellant.

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

LORIE A. NIXON,

Appellant.

Argued April 14, 1998.
Filed Sept. 21, 1998.

* * *

Before DEL SOLE, TAMILIA and EAKIN, JJ.

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DEL SOLE, Judge:

Appellants, Dennis and Lorie Nixon, were convicted of involuntary manslaughter and endangering the welfare of a child. They were sentenced to two and one-half to five years incarceration and a fine of $1,000. This direct appeal followed. We affirm.

On appeal, Appellants raise five issues. The first three issues concern Appellants' trial counsel's ineffectiveness for failing to raise: (1) Shannon Nixon's refusal of medical treatment pursuant to her right of privacy guaranteed by the U.S. and Pennsylvania constitutions; (2) Shannon Nixon's ability to refuse medical treatment as a mature minor; and (3) a violation of the notice requirement of due process where spiritual treatment was authorized by statute. Appellants additionally argue the trial court erred in failing to deliver a mistake of fact charge to the jury. Finally, Appellants argue the trial court improperly imposed an excessive sentence.

Appellants were the parents of Shannon Nixon ("Shannon"). The Nixon family are members of the Faith Tabernacle Church, a religion in which illnesses are addressed through spiritual treatment rather than by medicine. Thus, when Shannon began to feel ill in June of 1997, Appellants took her to be "anointed" at the church and prayed for her recovery. Shannon initially felt better and told her parents she had received her "victory", a recovery in answer to prayer. However, soon Shannon was ill again. As Shannon became increasingly weak and fell into a coma, Appellants continued to pray for her recovery. Shannon died hours after she fell into a coma. During the autopsy, it was determined that Shannon died of complications related to the onset of diabetes acidosis.

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Because of the way Appellants have framed their first three issues, we choose to address the ineffective assistance of counsel claims, as well as the merits of the claims underlying the ineffectiveness claims. Appellants have complained, and we agree, that the trial court's rulings on these issues were not precise. No opinion has been filed to provide additional guidance on the rulings. Therefore, we can not determine clearly whether the trial court found these issues to be waived or whether the trial court addressed them on their merits. Because Appellants have raised these issues in the guise of ineffectiveness and alternatively on their merits, we choose to address both arguments.

Ineffective Assistance of Counsel

Trial counsel is presumed to be effective and an appellant has the burden of proving otherwise. Commonwealth v. Williams, 524 Pa. 218, 229, 570 A.2d 75, 81 (1990). Appellants present three issues they claim trial counsel was ineffective for failing to raise. A careful review of the record, however, shows that these issues were adequately raised and argued by Appellant's trial counsel before and during the trial and were rejected by the trial court. Accordingly, there was no waiver of issues and counsel was not ineffective for failing to raise these claims.

Right to Privacy/Mature Minor

As described above, Appellants claim that Shannon had a right to refuse medical treatment pursuant to her constitutional right to privacy which would eliminate Appellants' duty to provide treatment. Appellants argue that

a court evaluating a privacy interest should look at whether there exists a compelling state interest upon which to base encroachment into the right of privacy. Further, Appellants argue, because Shannon exercised her right to privacy, "her incapacity as a minor to seek medical treatment fades" and thus, "the [Appellants'] parental duty is discharged." Appellants' Brief at 21. Appellants additionally assert Shannon's ability to refuse medical treatment as a mature minor abrogated Appellants' duty of care. Because both of these arguments necessitate an abrogation of Appellants' parental duty of care, we will address them together.

Although Shannon, as a mature minor, had a right to refuse medical treatment pursuant to her constitutional right to privacy, this right does not discharge her parents' duty to override her decision when her life is in immediate danger. Our Supreme Court, in Green Appeal, 448 Pa. 338, 292 A.2d 387 (1972), permitted a sixteen-year-old boy to refuse to undergo an operation based upon religious beliefs. However, the permission to refuse medical treatment extended to minors in Green was strictly limited to situations in which the minor's life was not threatened. Thus, Green did not provide Shannon with the legal means to refuse medical treatment at a time when her life was in danger.

In a case more directly on point, a panel of this court specifically refused to extend a minor's right to exercise religious beliefs in such a manner that the parents' duties to the minor were abrogated. Commonwealth v. Cottam, 420 Pa.Super. 311, 616 A.2d 988 (1992). In Cottam, the defendants failed to provide food to their fourteen-year-old son and twelve-year-old daughter for a six-week period. The

defendants argued that their children were mature enough to voluntarily exercise their religious beliefs by refraining from eating and consequently, the defendants had no duty to provide food for the children. The court did not agree, holding instead that:

> . . . even if [the children] were considered mature enough to freely exercise their religious beliefs, this does not dispel [defendants'] duty while the children are in their care, custody and control to provide them with parental care, direction and sustenance.

Cottam at 335-37, 616 A.2d at 1000.

In Commonwealth v. Barnhart, 345 Pa.Super. 10, 497 A.2d 616 (1985), another set of parents from Appellants' church were convicted of involuntary manslaughter and endangering the welfare of a child after relying solely on spiritual healing to treat their two-year-old son's cancer. This court held that every parent in the Commonwealth of Pennsylvania had a duty of care to their child, at the very least, "to avert the child's untimely death." Barnhart, at 621. The court elaborated on the nature of the parents' duty:

> A parent has the legal duty to protect her child, and the discharge of this duty requires affirmative performance. The inherent dependency of a child upon his parent to obtain medical aid, i.e., the incapacity of a child to evaluate his condition and summon aid by himself, supports imposition of such a duty upon the parent.

Id. (citations omitted).

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Appellants had a duty to their minor child Shannon to override her own religious beliefs and obtain medical treatment for her when her condition became life-threatening. Neither Shannon's right of privacy, nor her status as a mature minor abrogated that duty. Thus, Appellants' arguments fail on their merits.

Notice

Appellants argue that their prosecution violated notice requirements of due process where spiritual treatment was authorized by statute. Appellants' argument refers to a possible conflict between criminal statutes and child abuse statutes. The Child Protective Services Act ("The CPSA") provides:

> If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department of Public Welfare and the county agency shall not reference "child

> abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred for general protective services, if appropriate.

23 Pa.C.S.A. § 6303(b)(3).

The involuntary manslaughter statute provides:

> A person is guilty of involuntary manslaughter when as a direct result of doing an unlawfulact in a reckless or grossly negligent manner or the doing of a lawful act in a reckless or grossly negligent manner, he causes the death of another person.

18 Pa.C.S.A. § 2504.

Appellants argue that because the CPSA exempts parents who utilize spiritual treatment for their children from characterization as child abusers, they did not have sufficient notice that their spiritual treatment of Shannon could be criminal under the involuntary manslaughter statute. We disagree.

We find that the CPSA and the involuntary manslaughter statutes are not in conflict in their plain meaning, as well as under a constitutional analysis. A plain reading of the statutes shows that an act which does not qualify as child abuse may still be done in a manner which causes death and thus qualifies as involuntary manslaughter. This precise situation occurred in this case. While the Nixons were not considered

child abusers for treating their children through spiritual healing, when their otherwise lawful course of conduct led to a child's death, they were guilty of involuntary manslaughter.

Appellants point to statutes in Minnesota and Florida which were found to violate due process requirements upon review by courts considering appeals of convictions similar to Appellants'. These statutes, however, differ significantly from the CPSA. The Minnesota statute in question in State v. McKown, 475 N.W.2d 63 (Minn.1991), cert. denied, 502 U.S. 1036, 112 S.Ct. 882, 116 L.Ed.2d 786 (1992), provided that "spiritual means or prayer . . . shall constitute 'health care.' " Id. at 65, n. 3. Similarly, a Florida statute at issue in Hermanson v. State, 604 So.2d 775 (Fla.1992), provided that while spiritual treatment will not be characterized as child abuse, a court may still order:

> . . . when the health of the child requires it, the provision of medical services by a physician, . . . , or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

Id. at 776 (emphasis added).

Thus, the Florida statute raised spiritual intervention to a level equal to that of medical treatment. The Minnesota and Florida legislatures specifically defined spiritual healing as accepted treatment for illness in children, raising it to the same level as conventional medical treatment.

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The CPSA specifically does not equate spiritual treatment with medical care; rather, it merely exempts parents who treat their children in this manner from characterization as child abusers. Further, the CPSA does not negate the duty imposed on parents to procure medical care for their children; in fact, the CPSA provides a protocol through which the state can step in and enforce that duty "when the lack of medical or surgical care threatens the child's life or long-term health." It is clear that if the Pennsylvania legislature wanted to authorize spiritual treatment as health care, it could have adopted a statute similar to the one in Minnesota. However, the purpose of the CPSA is to ensure that children in life-threatening danger receive proper medical attention. Thus, the statutes upon which our sister courts found unconstitutional are distinguishable from the CPSA.

Jury Charge

At trial, Appellants requested the court instruct the jury that Appellants were acting under a mistake of fact. Their mistake of fact, Appellants allege, was that they believed "their daughter would not die and the Lord would intervene." Appellants' Brief at 35. The trial court, however, found the facts did not warrant a mistake of fact charge, and based its holding on Appellants' testimony about God as the giver and taker of life. The trial court concluded ". . . there was no mistake of fact by them seeking divine intervention." R.R. at 428a.[1]

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1. In reviewing trial matters, we have relied on the Reproduced Record because an original trial transcript was never filed with this court. We note that Appellee has not objected to the Reproduced Record.

Appendix B

We shall not reverse a trial court's refusal to give a requested jury charge unless the court's refusal was prejudicial to the defendants. Commonwealth v. Cottam, 420 Pa.Super. 311, 333-35, 616 A.2d 988, 999 (1988). If the proposed jury charge is inapplicable and improper, the court should not give it to the jury. Id.

The trial court found that Appellants' testimony did not provide a proper basis for a mistake of fact charge. We will not disturb the trial court's finding, especially as we look at the testimony of Appellant Lorie Nixon: "I feel that God is the giver and taker of life." R.R. at 388a. While Appellants had hope and faith that divine intervention could cure Shannon, they also knew it might not.

Sentencing

Appellants argue the trial court abused its discretion in imposing a sentence above the aggravated range outlined in the sentencing guidelines. Further, Appellants assert, the trial court failed to consider Appellants' rehabilitative capacity. We disagree.

Because these issues challenge the discretionary aspects of sentencing, we must first decide whether to accept Appellants' appeal. 42 Pa.C.S.A. § 9781. Appellants' brief contains the requisite statement of reasons relied upon in support of appeal as required by Pa.R.A.P. 2119(f) and Commonwealth v. Tuladziecki, 513 Pa. 508, 522 A.2d 17 (1987). Therefore, we must determine if Appellants have raised a substantial question that the sentence imposed is not appropriate under the Sentencing Code. Commonwealth v. Felix, 372 Pa.Super. 145, 539 A.2d 371 (1988).

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The trial court sentenced Appellants above the aggravated range outlined in the Sentencing Guidelines; thus, a substantial question is raised only when the sentence is unreasonable. Id. at 150-52, 539 A.2d at 374. We note that ordinarily, allegations that a sentencing court "failed to consider" or "did not adequately consider" various factors is really a request for this court to put its judgment in place of the trial court's and do not raise a substantial question. Commonwealth v. Montalvo, 434 Pa.Super. 14, 641 A.2d 1176 (1994). Further, a claim of excessiveness when the sentence is within the statutory limits is not a substantial question. Commonwealth v. Dungan, 372 Pa.Super. 323, 539 A.2d 817 (1988). However, because of the unusual nature of this case, we will briefly address the merits of Appellants' argument.

The standard of review in sentencing matters is well settled. Sentencing is left to the discretion of the sentencing court and will not be disturbed absent a manifest abuse of discretion. Commonwealth v. Plank, 498 Pa. 144, 145, 445 A.2d 491, 492 (1982).

Appellants argue the trial court improperly considered their prior record in deciding their sentence. Appellants' prior records stem from the death of their child, Clayton, in 1991. Clayton was nine years old and died from complications arising from an ear infection. Because Appellants did not take Clayton for medical treatment, they were prosecuted and pled no contest to involuntary manslaughter and endangering the welfare of a child. In that instance, Appellants received two years of probation.

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The trial court based its departure from the sentencing guidelines on the repetitive nature of Appellants' crime. The trial court adequately explained its rationale and justification for the sentence in its June 10, 1997 order. The court gave great emphasis to the lack of opportunity for rehabilitation of Appellants and possibility of a recurrence of these criminal events. We will not disturb the trial court's well-justified sentence.

Appellants make several other arguments in which they assert the trial court did not properly give weight to certain testimony and sentencing factors. However, Appellants do not dispute the fact that the trial court was aware of and even addressed these factors. As stated above, we will not disturb a trial court's sentence on this basis absent an abuse of discretion.

Judgment of sentence affirmed.

APPENDIX C — PA. R.A.P. RULE 1925 ORDER OF THE COURT OF COMMON PLEAS, BLAIR COUNTY, PENNSYLVANIA DATED AND FILED JULY 16, 1997

THE COURT OF COMMON PLEAS
BLAIR COUNTY, PENNSYLVANIA

96 CR 1260

COMMONWEALTH OF PENNSYLVANIA

v.

DENNIS NIXON

NORMAN D. CALLAN JUDGE

Pa. R.A.P. RULE 1925 ORDER,

AND NOW, this 16th day of July, 1997, in conformance with Pa. R.A.P. Rule 1925, the reasons for the rulings on the pre-trial motions are set forth in the Orders dated February 11, 1997. Individual voir dire was conducted on the day of Jury Selection March 31, 1997, and completed on April 1, 1997. The reasons for the rulings on the objections made during trial are set forth in the trial transcript. The reasons for the sentence imposed are set forth in the sentencing transcript and the Order dated June 10, 1997.

BY THE COURT:

s/ Norman D. Callan
J.

APPENDIX D — ORDERS OF THE COURT OF COMMON PLEAS OF BLAIR COUNTY, PENNSYLVANIA DATED FEBRUARY 11, 1997 AND FILED FEBRUARY 14, 1997

IN THE COURT OF COMMON PLEAS OF
BLAIR COUNTY, PENNSYLVANIA

96 CR 1260

COMMONWEALTH OF PENNSYLVANIA

– vs –

DENNIS EUGENE NIXON, SR.

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96 CR 1261

COMMONWEALTH OF PENNSYLVANIA

– vs –

LORIE ANN NIXON

PRESIDING JUDGE: — THE HONORABLE NORMAN D. CALLAN

* * *

ORDER

AND NOW, this 11th day of February, 1997, the above-captioned matter having come before this court pursuant to pre-trial omnibus motions, on this one in particular founded on the free exercise clause of the Constitution of the United

States, as well as that of the state, Article 1, Section 3, the court is familiar with the cases referred to, not only Barnhart, but other constitutional issues dealing with freedom of religion and the free enterprise clause provides substantial protection for lawful conduct granted in religious belief. It does not, however, stand for the proposition of allowing unlawful conduct. The court is satisfied that the state has a compelling state interest in the public health, safety, morals and general welfare. There can't be any more least restriction than the prosecution after the event.

For those reasons, the objection and the Motion to Dismiss based on the free exercise clause is denied and dismissed.

BY THE COURT:

s/ Norman D. Callan
J.

Appendix D

IN THE COURT OF COMMON PLEAS OF
BLAIR COUNTY, PENNSYLVANIA

96 CR 1260

COMMONWEALTH OF PENNSYLVANIA

– vs –

DENNIS EUGENE NIXON, SR.

---

96 CR 1261

COMMONWEALTH OF PENNSYLVANIA

– vs –

LORIE ANN NIXON

PRESIDING JUDGE: — THE HONORABLE NORMAN D. CALLAN

* * *

ORDER

AND NOW, this 11th day of February, 1997, the above-captioned motion to dismiss based upon the age of the alleged victim, being three days shy of 17 years of age, and therefore, not subject to the caveats of *Barnhart* and *Cottam*, the court having reviewed both of those cases, the court is satisfied to follow the language of *Cottam* at 616 A.2d at Page 1000,

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> "[even if Laura and Eric were considered mature enough to freely exercise their religious beliefs, this does not dispel appellant's duty while the children are in their care, custody and control, to provide them with parental care direction and sustance."

The court based upon that is satisfied that the motion to dismiss based upon the age of the victim must be denied and dismissed at this level. This will not preclude a motion for a demurrer during the trial, in the event that the factual basis can be made out that would bring it within the confines that there was no duty of parental care, that she was not in the custody of her parents, or would take it out of the above-quoted aspect of the *Cottam* case.

BY THE COURT:

s/ Norman D. Callan
J.

Appendix D

IN THE COURT OF COMMON PLEAS OF
BLAIR COUNTY, PENNSYLVANIA

96 CR 1260

COMMONWEALTH OF PENNSYLVANIA

– vs –

DENNIS EUGENE NIXON, SR.

---

96 CR 1261

COMMONWEALTH OF PENNSYLVANIA

– vs –

LORIE ANN NIXON

PRESIDING JUDGE: — THE HONORABLE NORMAN D. CALLAN

* * *

ORDER

AND NOW, this 11th day of February, 1997, the above-captioned matter having come before this court on one of the omnibus pre-trial motions to dismiss, premised on the wording in the Child Protective Services Act, 23 Pa. C.S.A. b3, definition of child abuse, the court rejects embracing the caselaw from New Jersey. The court is satisfied with the

current status of Pennsylvania law as to Barnhart and Cottam, as to the duty of these parents and that their religion is not a defense in the respect as to the crimes alleged in this prosecution.

For that reason, the motion to dismiss is denied and dismissed.

BY THE COURT:

s/ Norman D. Callan
J.